

Court No. - 15

Case :- APPLICATION U/S 482 No. - 4038 of 2024

Applicant :- Pradeep Kumar Gupta

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home U.P. Lko. And 3 Others

Counsel for Applicant :- Akshay Kumar Singh, Palak Jawa, Ruchir

Counsel for Opposite Party :- G.A.

Hon'ble Karunesh Singh Pawar, J.

Heard learned counsel for the applicant as well as learned AGA for opposite party and perused the relevant documents on record.

This instant petition has been filed under Section 482 Cr.P.C. challenging the impugned notice/order dated 10.4.2024 under Section 111/110G of the Cr.P.C. in Case No.100 of 2024 (State vs. Pradeep Kumar Gupta) under Section 110G Cr.P.C., Police Station Vikas Nagar, District Lucknow North (Commissionerate Lucknow).

It is contended that the impugned notice under Section 111 Cr.P.C. has been issued without application of judicial mind. It is alleged that impugned notice has been issued on typed format in cyclostyle manner. In the said typed format only the date and name of the police station has been filled in the gaps. It is further submitted that contrary to the provisions of Section 111 Cr.P.C., the Pargana Magistrate has not set forth the substance of the information received by him in the impugned notice which is mandatory in nature and non-compliance thereof vitiates the entire proceedings.

Learned A.G.A has opposed the present application and has submitted that impugned proceedings under Section 111 Cr.P.C. are in accordance with law.

In this respect, learned counsel for the applicant has relied on 2010 (2) JIC 36 (All) (LB) Rakesh Singh @ Rakesh Kumar Singh vs. State of UP. The relevant part of the judgment is reproduced as under:-

".....5. Learned counsel for the petitioner placed reliance on the law laid down by Hon'ble Apex Court in the cases of Madhu Limaye v. Sub-Divisional Magistrate, Monghyr and others, reported in 1970 (3) SCC 746, Gopalanachari

v. State of Kerala, reported in A.I.R. 1981 SC 674= 1980 (Supp) S.C.C. Page 649 SC and also in support of his arguments cited law laid down by this Court in the cases of, Siya Nand Tyagi v. State of U.P., reported in 1993 (30) ACC page 146, Ranjeet Kumar and others v. State of U.P. and others, reported in 2002 (43) A.C.C. Page 627, Shiv Kant Tripathi v. State of U.P. and another, reported in 2005 (3) JIC 477 (All), Devendra Kumar v. State of U.P. reported in 2006 (1) JIC page 196 (All), Har Charan v. State of U.P. another, reported in 2008 (2) JIC page 418, Lola @ Manish Dhar Dubey @ Babloo v. State of U.P., reported in 2009 (1) JIC 629 (All) and Mahesh Prasad Kannaujia v. State of U.P. reported in 2009 (2) JIC 918 (All).

6. Chapter VIII of the Code of Criminal Procedure, 1973 under the heading "security for keeping peace and for good behaviour" authorizes the Magistrate to take appropriate steps for preventing a person from committing breach of public peace.

7. Sections 110 and 111 of the Code of Criminal Procedure, 1973 (Act No.2 of 1974) are reproduced as under :-

"110. Security for good behaviour from habitual offenders.- When (an Executive Magistrate) receives information that there is within his local jurisdiction a person who-

(a) is by habit a robber, house-breaker, thief, or forger, or

(b) is by habit a receiver of stolen property knowing the same to have been stolen, or

(c)habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or

(d) habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter II of the Indian Penal Code (45 of 1860), or under Section 489-A, Section 489-B, Section 489-C or Section 489-D of that Code, or

(e) habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

(f) habitually commits, or attempts to commit, or abets the commission of-

(I)any offence under one or more of the following Act, namely :-

(a) the Drugs and Cosmetics Act, 1940 (23 of 1940);

(b) the Foreign Exchange Regulation Act, 1973 (46 of 1973) ;

(c) the Employees' Provident Fund (and Family Pension Fund) Act, 1952 (19 of 1952)

(d) the Prevention of Food Adulteration Act, 1954 (37 of 1954) ;

(e) the Essential Commodities Act, 1955 (10 of 1955) ;

(f) the Untouchability (Offences) Act, 1955 (22 of 1955);

(g) the Customs Act, 1962 (52 of 1962) ;

(h) the Foreigners Act, 1946 (3 of 1946) ; or

(ii) any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

(g) is so desperate and dangerous as to render his being at large without security hazardous to the community,

Such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit.

111. Order to be made.- When a Magistrate acting under Section 107, Section 108, Section 109 or Section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

8. A bare perusal of provisions of Section 110 Cr.P.C. would reveal that the proceedings under Section 110 are taken to prevent committing such acts, a person as mentioned therein. The object of Section 110 is to afford protection to the public against a repetition of crimes against their person or property ; not a punishment of the offender for his past offences but securing good behaviour for the future. The passing of preliminary order under section 111 Cr.P.C. is a condition precedent for taking further steps, no final order in proceeding can be passed without giving an opportunity to such person to show cause.

9. In the case of Gopalanachari (Supra), it was observed by Hon'ble the Apex Court "Law is what the law does, even as freedom is what freedom does. Going by that test, Section 110 cannot be permitted in our free Republic to pick up the homeless and the have-nots as it did when under British subjection because today to be poor is not a crime in this country. George Bernard Shaw, though ignorant of Section 110, did sardonically comment that "the greatest of evils and the worst of crimes is poverty."

10. Since Section 110 Cr.P.C. confers drastic powers, bind down suspected persons, but not proved to have committed any of the offences specified in various clauses, the power should be used with extreme caution and judicial discretion and strictly according to procedure laid down, so that it may not be used as an engine of oppressions, black-mail or private vengeance and the

Magistrate should not be influenced by vague rumour or gossip.

11. In the case of Gopalanachari (Supra), Hon'ble the Apex Court observed in para -6 of the judgment as under :-

"The constitutional survival of Section 110 certainly depends on its obedience to Article 21, as this Court has expounded. Words of wide import, vague amplitude and far too generalised to be safe in the hands of the police cannot be constitutionalised in the context of Article 21 unless read down to be as a fair and reasonable legislation with reverence for human rights. A glance at Section 110 shows that only a narrow signification can be attached to the words in clauses (a) to (g), "by habit a robber.....", "by habit a receiver of stolen property", "habitually protects or harbours thieves.....", "habitually commits or attempts to commit or abets the commission of....." "is so desperate and dangerous as to render his being at large without security hazardous to the community." These expressions, when they become part of the preventive chapter with potential for deprivation of a man's personal freedom up to a period of three years, must be scrutinized by the court closely and anxiously. The poor are picked up or brought up, habitual witnesses swear away their freedom and courts ritualistically commit them to prison and Article 21 is for them a freedom under total eclipse in practice. Courts are guardians of human rights. The common man looks upon the trial Court as the protector. The poor and the illiterate, who have hardly the capability to defend themselves, are nevertheless not 'non-persons', the trial Judges must remember. This Court in Hoskot case has laid down the law that a person in prison shall be given legal aid at the expense of the State by the court assigning counsel. In cases under Section 110 of the Code, the exercise is often an idle ritual deprived of reality although a man's liberty is at stake. We direct the Trial Magistrates to discharge their duties, when trying cases under Section 110, with great responsibility and whenever the counter-petitioner is a prisoner give him the facility of being defended by counsel now that Article 21 has been reinforced by Article 39- A. Otherwise the order to bind over will be bad and void. We have not the slightest doubt that expressions like 'by habit', 'habitual', 'desperate', 'dangerous', 'hazardous' cannot be flung in the face of a man with laxity of semantics. The court must insist on specificity of facts and be satisfied that one swallow does not make a summer and a consistent course of conduct convincing enough to draw the rigorous inference that by confirmed habit, which is second nature, the counter-petitioner is sure to commit the offences mentioned if he is not kept captive. Preventive sections privative of freedom, if incautiously proved by indolent judicial processes, may do deeper injury. They will have the effect of detention of one who has not been held guilty of a crime and carry with it the judicial imprimatur, to boot. To call a man dangerous is itself dangerous ; to call a man desperate is to affix a desperate adjective to stigmatize a person as hazardous to the community is itself a judicial hazard unless compulsive testimony carrying credence is abundantly available. A sociologist may pardonably take the view that it is the poor man, the man without political clout, the person without economic stamina, who in practice gets caught in the coils of Section 110 of the Code, although, we as court, cannot subscribe to any such proposition on mere assertion without copious substantiation. Even so, the court

cannot be unmindful of social realities and be careful to require strict proof when personal liberty may possibly be the causality. After all, the judicial process must not fail functionally as the protector of personal liberty."

12. The powers under section 110 Cr.P.C. must be exercised after observing all the formalities required under the law. The Magistrate can apply his power only on convincing testimony that the person is clear and present danger to the society. It is for the prevention, not the punishment of the crime. The Magistrate has to exercise his discretion in judicious manner.

13. The passing of preliminary order under Section 111 Cr.P.C. is obligatory. An order under section 111 Cr.P.C. is a condition precedent for taking further steps in any proceedings under sections 107 - 110 Cr.P.C. The first thing that the Magistrate must do after receipt of the information referred to in Sections 107 - 110 Cr.P.C. is to apply his mind to such information and, if he is satisfied that there is ground for proceeding under this chapter, to pass an order in writing under section 111 Cr.P.C. The order under section 111 Cr.P.C. must be in a writing and broadly contain the elements (i) Substance of the information received under Sections 107 - 110 Cr.P.C. (as the case may be), (ii) Upon a consideration of such information he has formed the opinion that there is a likelihood of a breach of the peace and that it is necessary to proceed under the relevant sections (Sections 107 - 110 Cr.P.C. as the case may be). He is not bound to draw up an order under Section 111 Cr.P.C., merely because he has received a Police Report or other information, (iii) the amount of the bond to be executed, (iv) the term for which the bond is to remain in force, (v) The number, character and class of sureties required, in cases under Section 110 Cr.P.C., and, if so required, under Sections 107 - 109 Cr.P.C. On the other hand, the order under section 111 Cr.P.C. need not give - (i) the source of the information received, or supply a copy of the Police report (ii) the list of witnesses in support of the information or the order, (iii) the definite acts which the person intends to commit where the substance of the information is communicated, (iv) a reference to Section 111 Cr.P.C. itself, if the substantive section (107-110 Cr.P.C. as the case may be) is mentioned in the order, (v) the period of imprisonment to be suffered in default of execution of the bond, (vi) any extraneous matter.

14. In the case of Madhu Limaye (Supra), Hon'ble the Apex Court observed "Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquility at his hands. Although the section speaks of the 'substance' of the information it does not mean that the order should not be full. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word 'substance' means the essence of the most important parts of the information."

15. From the perusal of the record, it transpires that the impugned notice under section 111 Cr.P.C. has been issued on a typed format in a cyclo styled manner and in the said typed format only the name, date and police station has been

filled in the gaps and also the Pargana Magistrate did not set forth the substance of the information received by him in the impugned notice.

16. In the case of Madhu Limaye (Supra) it was held by Hon'ble the Apex Court that the person proceeded against show cause notice must be informed of the allegations made against him, by giving him the substance of the information so that he may meet such allegations.

17. The preliminary order contemplated under Section 111 Cr.P.C. is a judicial order and has to be prepared and drawn up cautiously and carefully in compliance with the provisions of section 111 Cr.P.C. and the order must contain reasons of the Magistrate satisfaction. The substance of the information is the matter upon which he has to show cause. If substance of information is not given in the order under Section 111 Cr.P.C. the person against whom the order has been made will remain in confusion. The extent of information which must be set forth depends in each case upon the circumstances of that case. The basic object of preliminary order being to give the person proceeded against an opportunity to meet the allegation made against him as well as nature of the order proposed."

In the present case also the impugned order has been passed on the printed format without recording any reasons and this shows total non application of judicial mind. The impugned order in view of the aforesaid judgment is not in accordance with law. The notice under Section 111 Cr.P.C. contains allegations on printed/cyclostyle proforma which indicates per-conceived notions hence, the impugned notice under challenge is void and proceedings against the petitioner is nullity and without jurisdiction as substance of information received as required is incomplete and ambiguous which vitiates the entire proceedings. Such notice is apparently abuse of process of law and the Pragana Magistrate has failed to comply with the mandatory requirements of Section 111 Cr.P.C. which vitiates the preliminary order as well as the consequential proceedings. The procedure followed by learned Magistrate is not in accordance with law.

Considering the aforesaid facts and law laid down by this Court as well as the Apex Court in the aforesaid cases, it is a fit case to invoke the powers of this Court under Section 482 Cr.P.C.

Accordingly, the petition under Section 482 Cr.P.C. is allowed and the impugned notice/order dated 10.4.2024 under Section 111/110G of the Cr.P.C. in Case

No.100 of 2024 (State vs. Pradeep Kumar Gupa) under Section 110G Cr.P.C., Police Station Vikas Nagar, District Lucknow North (Commissionerate Lucknow) are hereby quashed. However, learned Magistrate shall be at liberty to draw fresh proceedings against the applicant in accordance with law.

Order Date :- 2.5.2024

Madhu